

EPSTEIN BECKER & GREEN, P.C.

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Attorneys for Defendant United States Health Clean Corporation d/b/a US Health Clean

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEPHTY CRUZ and MICHAEL BALLETO, as :
TRUSTEES OF THE DISTRICT 6 INTERNATIONAL :
UNION OF INDUSTRIAL, SERVICE, TRANSPORT : 07 Civ. 6392 (LTS)(KNF)
AND HEALTH EMPLOYEES HEALTH PLAN and :
THE DISTRICT 6 INTERNATIONAL UNION OF :
INDUSTRIAL, SERVICE, TRANSPORT AND :
HEALTH EMPLOYEES PENSION PLAN, :
:
Plaintiffs, :
:
- against - :
:
US HEALTH CLEAN, :
:
Defendant. :
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**DECLARATION OF DAVID J. CLARK, ESQ.
IN SUPPORT OF EPSTEIN BECKER & GREEN, P.C.'S
MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT
UNITED STATES HEALTH CLEAN, d/b/a US HEALTH CLEAN**

DAVID J. CLARK, hereby declares pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney with the law firm of Epstein Becker & Green, P.C. ("EBG"), counsel for Defendant United States Health Clean Corporation d/b/a US Health Clean ("USHC"). I respectfully submit this declaration in support of EBG's motion to withdraw as counsel for USHC in this action.
2. EBG is counsel of record to USHC in this action. I am the attorney at EBG who has represented USHC in this action.

3. This case was commenced on July 12, 2007 and USHC filed its answer to the Complaint on September 21, 2007.

4. Discovery is not complete and no trial date has been set in this case.

5. Attached as Exhibit A is a copy of the Pre-Trial Scheduling Order dated December 4, 2007 in this case.

6. A settlement conference has been scheduled to occur in this matter on March 18, 2008.

7. On March 7, 2008, I received a telephone call from Marc A. Tenenbaum, Esq. of Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC, counsel for plaintiffs, who informed me that EBG had previously represented plaintiffs in other matters, and that such representation had continued until 2005. Mr. Tenenbaum also noted that some events at issue in this action occurred in 2005 and earlier. Mr. Tenenbaum stated that these circumstances could present a conflict for EBG or at least could give the appearance of impropriety.

8. Prior to March 7, 2008, I was not aware that EBG had represented plaintiffs on any matters. Upon further inquiry I have learned that for several years prior to May 2005, EBG provided plaintiffs with general advice and counsel regarding the administration of plaintiffs' Funds, and also represented plaintiffs with respect to an unrelated lawsuit pending in the United States District Court, Eastern District of Virginia, Index No. 3:99 CV 556, in which it was alleged that the District 6 Pension Fund violated the Employee Retirement Income Security Act of 1974 (ERISA) by allegedly misusing its funds in a variety of ways. EBG stopped representing plaintiffs in or around May 2005.

9. The instant action essentially involves allegations by plaintiffs that USHC did not make payments to plaintiffs which USHC was contractually obligated to make. One of USHC's

defenses is that some payments that it thought were being made to plaintiffs were actually being received and kept by the District 6 Union (not the plaintiffs).

10. I do not believe there is any connection whatsoever between EBG's prior representation of plaintiffs and the events involved in this lawsuit, and no privileged information of plaintiffs has been used against them, as I was unaware until March 7, 2008 that there even was a prior representation of plaintiffs by EBG.

11. As Canon 9 of the Lawyer's Code of Professional Responsibility provides, "A lawyer should avoid even the appearance of professional impropriety." Further, EBG wishes to avoid even the suggestion that it might be in a position to use any privileged information of plaintiffs against them in this lawsuit.

12. Accordingly, I respectfully request that the Court issue an order permitting EBG to withdraw from representing USHC herein, and allow USHC an appropriate time period to retain new counsel.

13. For all of the foregoing reasons, we believe that "satisfactory reasons" exist such that EBG should be permitted to withdraw from representing USHC in this action.

14. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 11, 2008



David J. Clark

CERTIFICATE OF SERVICE

I, David J. Clark, an attorney admitted to practice before this court, hereby certify, under penalty of perjury, that on March 11, 2008, I caused a true copy of the attached Declaration to be served by first class mail upon:

Marc A. Tenenbaum, Esq.
Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
Trinity Centre
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212-943-9080
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US Health Clean
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A handwritten signature in cursive script, reading "David J. Clark", is written over a horizontal line.

DAVID J. CLARK